

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Karen Gauthier, : Civil Action No.: 7:15-cv-07840
Plaintiff, :
v. :
Cavalry Portfolio Services, LLC, : **COMPLAINT**
Defendant. :
:

For this Complaint, Plaintiff, Karen Gauthier, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").
2. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b), in that Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. Plaintiff, Karen Gauthier ("Plaintiff"), is an adult individual residing in Richmond, Virginia, and is a "person" as the term is defined by 47 U.S.C. § 153(39).
4. Defendant, Cavalry Portfolio Services, LLC ("Cavalry"), is a New York business entity with an address of 7 Skyline Drive, Hawthorne, New York 10532, and is a "person" as the term is defined by 47 U.S.C. § 153(39).

FACTS

5. Within the last year, Cavalry called Plaintiff's cellular telephone, number 804-xxx-7914, using an automatic telephone dialing system ("ATDS").
6. When Plaintiff answered calls from Cavalry, she heard silence before a "beep".

7. Plaintiff never provided her cellular telephone number to Calvary and never provided consent to be contacted at her cellular telephone number.

COUNT I
VIOLATIONS OF THE TCPA – 47 U.S.C. § 227, et seq.

8. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

9. At all times mentioned herein, Calvary called Plaintiff's cellular telephone number using an ATDS or predictive dialer.

10. In expanding on the prohibitions of the TCPA, the Federal Communications Commission ("FCC") defines a predictive dialer as "a dialing system that automatically dials consumers' telephone numbers in a manner that "predicts" the time when a consumer will answer the phone and a [representative] will be available to take the call..." 2003 TCPA Order, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not "free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear 'dead air' or a dial tone, causing frustration." *Id.* In addition, the TCPA places prohibitions on companies that "abandon" calls by setting "the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned." *Id.*

11. Calvary's telephone system(s) have some earmarks of a predictive dialer.

12. When Plaintiff answered calls from Cavalry, she heard silence before a beep.

13. Calvary's predictive dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

14. The telephone number called by Calvary was assigned to a cellular telephone service pursuant to 47 U.S.C. § 227(b)(1).

15. The calls from Calvary to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

16. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays that judgment be awarded in Plaintiff's favor and against Defendant as follows:

1. Statutory damages of \$500.00 for each violation determined to be negligent pursuant to 47 U.S.C. § 227(b)(3)(B);
2. Treble damages for each violation determined to be willful and/or knowing pursuant to 47 U.S.C. § 227(b)(3)(C); and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: October 4, 2015

Respectfully submitted,

By: /s/ Sergei Lemberg

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